IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

Crl.MC.No. 537 of 2007()

CC.282/2006 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA

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PETITIONER: 1ST ACCUSED

BYJU RAGHAVAN.E,AGED 28,
S/O RAGHAVAN, SAKETHAM,
MADAPALLY COLLEGE P.O.,
KOZHIKODE.

BY ADV. SMT.NAINA RAJI NAIR
SRI.M.J.JOHNSON.

RESPONDENTS:STATE AND COMPLAINANTS

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1. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
EDACHERY POLICE STATION,
KOZHIKODE DISTRICT.

3. ONCHIYAM CO-OPERATIVE URBAN SOCIETY LTD,
NO.D 2759, REPRESENTED BY ITS SECRETARY
K.PRAKASHAN, KANNOOKKARA P.O.,
KOZHIKODE DISTRICT.

4. K.PRAKASHAN,
SECRETARY ONCHIYAM CO-OPERATIVE URBAN SOCIETY LTD,
NO.D 2759, KANNOOKKARA PO.,
KOZHIKODE DISTRICT.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.537 of 2007

Dated this the 28th day of February, 2007

ORDER

The petitioner is the 1st accused in a prosecution under Sections 468, 471 and 420 read with 34 I.P.C. He is a member of the noble profession of law. The crux of the allegations against him is that in furtherance of the common intention which he shared with the co-accused a forged salary certificate of the co-accused was presented before a Society to enable the petitioner to avail a loan. Cognizance has been taken on the basis of a final report submitted by the police after investigation. The petitioner has not appeared before the learned Magistrate so far. He has come to this Court with this petition under Section 482 Cr.P.C to quash the proceedings.

2. The learned counsel for the petitioner submits that the petitioner was really unaware of the alleged forgery committed by the 2nd accused. She further submits that the petitioner had promptly informed the Society that he is prepared to offer other sureties. Counsel further submits that the petitioner has now discharged the entire liability to the Society. She urges that if notice of this Court were received, the Society will pass appropriate resolution and report to this Court that they do not want to proceed against the 1st accused. In these circumstances, powers under Section 482 Cr.P.C may be invoked, it is submitted.

3. The offences include non compoundable offences and in these circumstances the mere fact that the alleged victim/Society does not want to prosecute the case is no reason for the Court to invoke its powers under Section 482 Cr.P.C. The petitioner can of course appear before the learned Magistrate along with the complainant and report that the compoundable offences have been compounded. The petitioner can appear before the learned Magistrate and claim discharge for the offences alleged against him. The learned Magistrate, needles to say, is obliged to consider the plea for discharge under Section 239 Cr.P.C.

4. The decision in **B.S.Joshy v. State of Haryana** [A.I.R 2003 S.C 1386] does of course lay down that the width and amplitude of the powers under Section 482 Cr.P.C are not fettered by the provisions of Section 320 Cr.P.C. In an appropriate case, such powers can be invoked ignoring the bar under Section 320 Cr.P.C. But such powers are not to be invoked as a matter of course. The Supreme Court invoked such powers in **B.S.Joshy** only because of the peculiar facts and circumstances of that case. That decision cannot be read and understood to mean that the distinction between compoundable and non compoundable offences stand obliterated now. The distinction is real and unless compelling reasons are there, a Court must be slow to invoke the powers under Section 482 Cr.P.C on the ground that a non compoundable offence has been compounded.

5. I am, in these circumstances, not satisfied that the powers under Section 482 Cr.P.C can or ought to be invoked in the facts and circumstances of the case. The learned counsel for the petitioner submits that if unnecessary insistence were made on the personal appearance of the petitioner - a legal practitioner on all dates of posting, that would cause great hardship and prejudice to the petitioner. I am of opinion that the petitioner can apply for exemption from personal appearance before the learned Magistrate and I find no reason to assume that learned Magistrate would insist on the petitioner's personal appearance on all dates of posting. The petitioner's personal appearance, needles to say, need be insisted only when absolutely necessary for the progress of the case. It is prayed that there may be a direction enabling the petitioner to claim discharge under Section 239 Cr.P.C. No direction of this Court is necessary. Every court must give the indictee facing allegations of a warrant offence in a case instituted by the police an opportunity to claim discharge under Section 239 Cr.P.C.

6. With the above observations, this Crl.M.C is dismissed.

(R.BASANT, JUDGE)

rtr/-